IN THE HIGH COURT OF DELHI AT NEW DELHI

WP(C) No. 15232/2004

Judgment reserved on: July 9, 2007

Judgment delivered on: September ,2007

M.C.D ..... Petitioner
Through: Ms.Nandita Rao, Advocate

versus

Mr. Narender Kumar & Anr. ..... Respondents
Through: Mr. Sanjay Ghose, Advocate

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes

2. To be referred to Reporter or not? Yes

3. Whether the judgment should be reported in the Digest? Yes

KAILASH GAMBHIR, J.

By way of this writ petition the petitioner seeks to challenge the impugned award dated 18.9.2003 passed by the Labour Court No.IX,

Karkardooma Courts, Shahdara, Delhi. The brief facts for deciding the present writ petition are that pursuant to industrial disputes raised by the respondents, the appropriate Government made the following reference for adjudication as under:

> "Whether the services of S/Sh. Narender Kumar and Inder Pal Sharma, casual/daily rated/muster roll workers have been terminated illegally and/or unjustifiably by the management and if so to what relief are they entitled and what directions are necessary in this respect?"

The Labour Court after taking into consideration the pleadings filed by the parties, evidence led by them and the documents filed on record, came to the conclusion that these respondents cannot be given protection of Section 25-F of the Industrial Disputes Act, 1947, as they did not complete 240 days of continuous service in a calendar year. However, the Labour Court found violation of Section 25-G and 25-H of the Industrial Disputes Act on the part of petitioner. This finding was given by the Labour Court after referring to the cross-examination of MW-I, adduced by the petitioner, who in his cross-examination admitted the fact of appointment of some Beldars during the year 1991-1992 without inviting the present respondents for their employment on the

said post of Beldars. The Labour Court thus gave directions to the petitioner management to reinstate the respondents workmen with back wages to the extent of 50% as admissible to them under the Industrial Disputes (Central) Rules, 1957 w.e.f. 14.1.1990. Aggrieved with the said order the petitioner management has preferred the present writ petition.

I have heard counsel for the parties and perused the records. The main contention of the counsel for the petitioner is that the respondents were engaged on daily wage basis for a seasonal work for a limited period of 53 days in the Horticulture Department of MCD, Shahdara (North) Zone and upon completion of the said work, their services were disengaged w.e.f. 14.1.90. The counsel for the petitioner further submitted that it is an admitted case between the parties that respondents have not completed the requisite period of 240 days of continuous employment in a particular year so as to claim protection under Section 25-F of the Industrial Disputes Act, and, therefore, the only issue which is required to be considered by this Court is whether there is any violation of Sections 25-G and 25-H of the Industrial Disputes Act on the part of the petitioner. The thrust of the argument of the counsel for the petitioner with regard to Sections 25-G and 25-H of

the I.D. Act is that once the respondents did not complete 240 days of service, there could not have been any question of compliance of Sections 25-G and 25-H of the I.D. Act. Counsel for the petitioner management contended that once, termination of the services of the respondents cannot be considered to be retrenchment within the meaning of Section 25-F of the Industrial Disputes Act, consequently, the provisions of Sections 25-G and 25-H also cannot be made applicable to such workmen.

Mr. Sanjay Ghosh, counsel for the respondents on the other hand did not press his argument with regard to Section 25-G of the I.D. Act and confined his submissions only to Section 25-H of the I.D. Act. The contention of the counsel for the respondents is that admittedly, the petitioner management had deployed/engaged Beldars in the year 1991-92 after terminating the services of the present respondents. Counsel for the respondent further contended that this admission has been made by the witness produced by the management itself, who in his deposition has categorically stated that in the year 1991-92 appointments were made on the post of Beldars. Admittedly, the present respondents were not considered at the time of appointment on the said post of Beldars and no

letter or any notice was given to the respondents in the year 1991-92 when other Beldars were appointed. The counsel for the respondents thus contended that violation of Section 25-H stands admitted by the petitioner itself. Counsel for the petitioner management, in reply, thereto contended that the employment of the respondents was purely temporary and contractual in nature, against seasonal work for a specified period of 53 days and therefore, it cannot be said that their services were terminated by the petitioner management.

Counsel for the respondents has relied upon the judgment of **S.M.Nilajkar & Ors. Vs. Telecom District Manager, Karnataka, JT 2003 (3) SC 436** to put across his point that in order to exclude the termination of a scheme/project from the definition of retrenchment it is for the employer to prove the ingredients of S.2(oo)(bb) of the I.D. Act. Counsel for the respondents has also placed reliance on the judgment of the Apex Court in **Samishta Dubey Vs. Citi Board, Etawah & Anr., 1999 II AD (SC) 257, Amar Pal & Anr. Vs. MCD, 2006 II AD (Del) 43** and **Central Bank of India Vs. S. Satyam, 1996 SCC (L&S) 1273** in support of his argument that for application of Section 25-H of the I.D. Act, workmen who have even less than 240 days of service

are also protected. Furthermore, where any workman is retrenched and the employer proposes to take into employment any other person, then, such a retrenched person should be considered first for re-employment when he offers himself for employment.

Para 7 of **Central Bank of India (supra)** is reproduced below:-

> **"7.** Section 25-H then provides for re-employment of retrenched workmen. It says that when the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons. Rules 77 and 78 of the Industrial Disputes (Central) Rules, 1957 prescribe the mode of re-employment. Rule 77 requires maintenance of seniority list of all workmen in a particular category from which retrenchment is contemplated arranged according to seniority of their service in that category and publication of that list. Rule 78 prescribes the mode of re-employment of retrenched workmen. The requirement in Rule 78 is of notice in the manner prescribed to every one of all the retrenched workmen eligible to be considered for re-employment. Shri Pai contends that Rules 77 and 78 are unworkable unless the application of Section 25-H is confined to the category of retrenched workmen to whom Section 25-F applies. We are unable to accept

this contention."

Para 25 of **Amar Pal's case (supra)** is reproduced below:

> "The rights of daily wagers have fallen for consideration in several cases both before the Apex Court as well as this Court. Im Samishtha Dubey's case (supra) the Apex Court has held that the workman who have seven less that 240 days of service would be entitled to the protection of Section 25 F, G & H of the Industrial Disputes Act, 1957.
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> In Central Bank of India Vs. S. Satyam and others 1996 SCC L&S 1273, it was held by the Apex Court that the applicability of the Section 25H was not confined to workmen who were in continuous service for one year or both only. Th principle of ' last come, first go' has to be complied in respect of daily wagers in service for a period of less than 240 days as well."

The counsel for the respondent has also relied on the judgment of **MCD Vs. Asha Ram & Anr., 2005 (II) AD (Del) 285** to support his contention that High Court can exercise its powers under Article 226 to interfere in the Award of the Labour Court only when the award suffers from an error of jurisdiction or is made in breach of the principles of natural justice or is vitiated by a manifest or apparent error of law and not otherwise. Relevant portion of para 6 of the said judgment is

reproduced below:

> "6. The position of law in respect of interference by Writ Court under Article 226 of the Constitution is well settled in view of the following:
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> (a) The Supreme Court in para 5 in Sadhu Ram v. Delhi Transport Corporation, AIR 1984 SC 1967 observed-
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> ".....nor we think that it was right for the High Court to interfere with the Award of the Labour Court under Article 226 on a mere technically. Article 226 is a device to secure and advance justice and not otherwise. In the result, we allow the appeal, set aside the judgment of the High Court and restore the Award of the Presiding Officer."
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> (b) The Supreme Court in Harbans Lal v. Jag Mohan, (1985) 4 SCC 333 in Para 5 held as under—
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> ".....The limitations on the jurisdiction of the High Court under Article 226 of the Constitution are well settled. The Writ Petition before he High Court prayed for a writ in the nature of certiorari, and it is well known that a writ in the nature of certiorari may be issued only if the order of the inferior tribunal of

> subordinate Court suffers from an error of jurisdiction, or from a breach of the principles of natural justice or is vitiated by a manifest or apparent error of law. There is no sanction enabling the High Court to reappraise the evidence without sufficient reason in law and reach finding of fact contrary to those rendered by an inferior Court or subordinate Court. When a High Court proceeds to do so, it acts plainly in excess of its power."

I find merit in the submissions of counsel for the respondents so far Section 25-H of the Industrial Disputes Act is concerned. Section 25-H of the I.D. Act does enjoin a duty on the employer to give an opportunity to the retrenched workman, in the event of employer proposing to take into his employment any person on the same post, and in such an eventuality the retrenched workman who offers himself for re-employment shall have preference over other person. The Supreme Court in **Samishta Dube's case (supra)** has held that the definition of 'workman' in industrial law is not restricted to regular employees and the same would also include daily wagers and the rule of seniority is applicable to daily wagers also. With this settled legal position, the only ground which was available to the petitioner management was to bring its case within the scope of Section 2 (oo) (bb)

of the Industrial Disputes Act which is an exception to Sections 25-F, G & H of the Industrial Disputes Act. Although, in the present petition as well as in the reply filed by the petitioner management to the statement of claim of respondents workmen, a plea has been taken that these workmen were employed on daily wages for seasonal work for a period of 53 days but no document in support thereof was placed by the petitioner to support the said assertion of seasonal employment of the respondents workmen for a limited period of 53 days. In the absence of any documentary or oral evidence adduced by the petitioner management it is difficult to believe the said assertion of the petitioner management. There cannot be any dispute that all the documents relating to appointment of the respondents workmen were in power and possession of the petitioner MCD and it was for the petitioner management to establish that the case of the respondents workmen falls within the exception as provided under Section 2 (oo) (bb) of the Industrial Disputes Act. In the evidence adduced by the petitioner management the witness pleaded his ignorance about the specific work and specific duration for which the services of the respondents workmen were taken. The said witness also admitted that some of the persons

were appointed as Beldar, in the later period, after retrenchment of the present workmen from their said job of Beldar. In view of such clear admission on the part of the witness produced by the petitioner, no credence can be given to the bald assertion of the petitioner , pleading the case of seasonal employment covered within the said exception of Section 2(oo)(bb) of the I.D. Act.

In the light of the aforesaid discussion, I do not find any merit in the present writ petition. The case of the respondent is squarely covered under Section 25-H of the I.D. Act. Since the respondent has not pressed his claim with regard to Section 25-G of the I.D. Act, therefore, findings of the Tribunal with regard to Section 25-G of the I.D. Act are set aside and to that extent the present petition is partly allowed. However, the findings of the Tribunal are upheld so far Section 25-H of I.D. Act is concerned. The present writ petition, therefore, fails so far Section 25-H is concerned.

With these directions, the present petition is disposed of.

September , 2007

KAILASH GAMBHIR
(JUDGE)